orders on any private citizens that were not applicants to take the bar exam. The April 4, 1989 Determination of the State Board of Law Examiners ordered that Petitioner David could not take the bar exam again or practice law in Minnesota. A State cannot exclude anyone from the practice of law when their action is clearly discriminatory. *Yick Wo v. Hopkins,* 118 U.S. 356. Petitioners could find no cases where any State Board of Law Examiners had issued an order against any private United States citizen, who was not an "applicant" to take the bar exam, preventing that citizen from taking the bar exam or practicing law. Since the State Board of Law Examiners is an arm of the Minnesota Supreme Court, the determination of the State Board of Law Examiners is clearly an action of the State of Minnesota. Such action by the State of Minnesota to exclude private citizen Petitioner David from the practice of law in Minnesota was a violation of due process and equal protection of the laws under the Fourteenth Amendment. *Dent v. West Virgina,* supra.

II. State Board of Law Examiners acted in Clear Absence of Jurisdiction.

Petitioner is a private United States citizen that had done nothing to invoke the jurisdiction of the State Board of Law Examiners. He was not an applicant to take the bar exam, yet the State Board of Law Examiners conducted 2 character investigation hearings on him and issued a subsequent determination (order) which stated that:

> " The Board of Law Examiners recommends that David R. Sina has not established good character and fitness, and has participated in the unauthorized practice of law and should not be admitted to take the Bar Examination and/or be admitted to the Bar of the State of Minnesota."

The State Board of Law Examiners was only authorized to conduct character investigation hearings and issue orders on "applicants" for the bar exam. (*Rule I- Rules of the Supreme Court and State Board of Law Examiners for Admission to the Bar as amended Oct. 1, 1986, Dec. 23, 1986 and Jan. 20, 1987).* The rules stated that a person became an applicant to take the bar exam only if an application was filed and a filing fee was paid. (*Rules 100A; 104E; 105; Rules of the Supreme Court and State Board of Law Examiners,* supra). The Bar Board rules further required that a new application be filed each time that the bar exam was taken. Since Petitioner David had not filed any application to take the Bar Exam after July 1985 nor paid any filing fee, he was not an applicant to take any bar exam and the State Board of Law Examiners had no jurisdiction over him. On Dec. 23, 2003, State Board of Law Examiners Director Margaret Fuller Corneille acknowledged in her letter to Petitioner David that:

> "Our files contain no bar application other than that which you filed for the July 1985 bar exam." (App., *infra,* A-45).

The Minnesota Supreme Court has the exclusive authority and jurisdiction to make any rules regarding the State Board of Law Examiners:

> " The supreme court shall, by rule from time to time, prescribe the qualifications of all applicants for admission to practice law in this state, and shall appoint a board of law examiners, which shall be charged with the administration of the rules and with the examination of all applicants for admission to practice law." *Minn. Stat. 481.01.*

"Jurisdiction" is the power to hear and determine, but it involves also the power to give the judgment that is

entered. *State v. Reed,* 156 N.W. 127 (Minn. 1916). A statute defining and limiting jurisdiction is to be construed as jurisdictional and as limiting the power of the court to act. *Land O'Lakes Dairy v. Hintzen,* 31 N.W. 2d 474 (1948). Compliance with a statute prescribing mode of acquiring jurisdiction is essential or proceedings will be a nullity. *Strom v. Lindstrom,* 275 N.W. 833 (1937). The State Board of Law Examiners had to comply with the rules established by the Minnesota Supreme Court regarding character investigation hearings and issue determinations only on applicants for the bar exam. Since Petitioner David was not an applicant to take the bar exam, it's hearings and determination were a nullity. Where a court acts without authority or jurisdiction, it's judgments and orders are regarded as nullities. *Burnham v. Superior Court of California,* 495 U.S. 604. They are not voidable, but simply void. *Elliott v. Peirsol,* 26 U.S. 328 (1828). The fact that Petitioner David attended the 2 character investigation hearings did not confer jurisdiction on the State Board of Law Examiners, as jurisdiction cannot be waived by consent of the parties. *Land O'Lakes Dairy v. Hintzen,* supra.

Both the district court (App. *Infra,* A-4) and the court of appeals (App. *Infra,* A-1) overlooked or failed to apply the fundamental law that the State Board of Law Examiners clearly acted in absence of all jurisdiction in conducting 2 character investigation hearings on Petitioner David and issuing a Determination on him, and, therefore, should not have granted Respondents' motions to dismiss the Petitioners' complaint.

III. Absolute Quasi Judicial Immunity Lost.

The doctrine of judicial immunity, though longstanding and expansive, is not absolute. Judicial immunity can be defeated for actions, though judicial in nature, taken in the complete absence of all jurisdiction. *Stump v. Sparkman,* 435 U.S. 349 (1978). The courts have

made a clear distinction between acts that are done by public officials in "excess" of jurisdiction (where there already was jurisdiction) from acts done in the clear "absence" of jurisdiction. *Stump v. Sparkman,* supra. Where there is clearly no jurisdiction over the subject matter, any authority exercised is usurped authority..." *Bradley v. Fischer,* 13 Wall 335, 351, 20 L.Ed. 646 (1872). The courts have also extended absolute quasi judicial immunity to boards of law examiners where they act as an arm or surrogate of the state's supreme court in administering the bar exam process. *Childs v. Reynoldson,* 777 F. 2d 1305 (8th. Cir. 1985); *LaNave v. Minnesota Supreme Court,* 915 F. 2d 386 (8th Cir. 1990). However, these cases, and other bar admission cases where absolute judicial immunity has been extended to a board of law examiners, dealt with situations where that individual had already become an "applicant" for the bar exam. Once a person had become an "applicant" for the bar exam, jurisdiction was conferred upon that board of law examiners. All of these cases are clearly distinguishable from Petitioner David's case, as Petitioner had done nothing to invoke the State Board of Law Examiner's jurisdiction. Petitioner David had not filed any application nor paid any filing fee, both of which were required to become an "applicant." Since Petitioner David had not become an applicant to take the bar exam, he had done nothing to invoke the jurisdiction of the State Board of Law Examiners, and therefore, the State Board of Law Examiners character investigation hearings of Apr. 9, 1987 and Apr. 25, 1988 and it's Determination of April 4, 1989 were done in clear absence of jurisdiction and the State Board of Law Examiners cannot invoke the defense of absolute quasi judicial immunity against Petitioners.

The district court and court of appeals incorrectly applied the absolute judicial immunity standard to Petitioners causes of action, in citing *LaNave v. Minnesota Supreme Court,* 915 F. 2d 386, 387 (8th. Cir. 1990) as controlling. Absolute quasi judicial immunity to a board of law

examiners under LaNave applies only to "applicants" who are in the bar examination process. In this case, Petitioner David was not an "applicant" to invoke the jurisdiction of the State Board of Law Examiners; therefore, Absolute quasi judicial immunity is not available to the State Board of Law Examiners and it's director as a defense to Petitioners' RICO and 42 USC 1983 causes of action against them.

IV. Attorney General of State of Minnesota cannot Represent Private Individuals.

The attorney general cannot represent private individuals where they are sued as individuals acting under color of law. The courts have made a clear distinction between "personal capacity suits" and "official capacity suits." Personal capacity suits seek to impose personal liability upon a government officer for actions he takes under color of law. *Scheuer v. Rhodes,* 416 U.S. 232 (1974). The Petitioners' allegations against Respondent State Board of Law Examiners and it's director is that they acted under color of law and not as performing any acts in their official capacities. (App. *Infra,* A-18; A-33). The attorney general only has the authority to represent public officials where they are sued in the course of their official duties. *Black v. Choose,* 612 F. Supp. 470 (D.C. Minn. 1984).

Since Respondent State Board of Law Examiners and it's director did not have subject matter jurisdiction to conduct the 2 character investigation hearings on Petitioner David and issue a determination on him; nor did they have absolute quasi judicial immunity, the attorney general did not have the legal authority to represent these individuals. The United States Supreme Court has consistently treated a judgment based upon an unauthorized appearance for a defendant by an attorney as a nullity. *Shelton v. Tiffin,* 12 L.Ed. 387; *Hatfield v. King,* 184 U.S. 162. Therefore, the motion to dismiss brought by the attorney general on behalf of respondents State Board of Law Examiners and it's

director was void and should not have been granted by the district court and affirmed by the court of appeals.

The Petitioners did challenge the unlawful authority of the attorney general to represent these respondents by bringing a timely motion to strike Respondents' motion to dismiss, supported by an affidavit and memorandum of law. (Record; Doc. 16, 17 & 18). A party to a suit may by timely motion dispute the authority of the opposing attorney to act for the party in whose name he is proceeding and, if the authority is not shown, the court will dismiss the action for want of parties before it. *Pueblo of Santa Rosa v. Fall,* 273 U.S. 315 (1927). A party to a suit that disputes an attorney's authority to act for opposing party by timely motion, supported by proper affidavit, should have the court grant it's motion. *Retail Chemists Corporation v. Climax Rubber,* 66 F. 2d 605 (2nd. Cir. 1933).

Minnesota law is well established that allows a party to challenge the authority of an attorney to appear on behalf of an individual party. A finding that an attorney who admitted service of the complaint as "attorney for defendants" had no authority to appear in action for one of the defendants is sustained by the evidence, and the case as to that defendant was properly dismissed for want of jurisdiction. *Park, Grant & Morris v. Shannon,* 167 N.W. 285 (Minn. Sup. Ct. 1918). Minnesota courts have further held that the trial court did not err in setting aside the appearance of the attorney as unauthorized, nor in vacating the judgment on motion of the defendants, on the ground that it then appeared of record to be void. *Stai v. Selden,* 92 N.W. 6 (Minn. Sup. Ct. 1902). This same court went on to say that when the appearance of the attorneys for the defendants was stricken from the record, the judgment appeared upon the record to be void, and the court was authorized to vacate it. *Stai v. Selden,* supra at 7. The attorney general does not have the authority to represent private individuals. *Hubert Humphrey III, Attorney General v. Gordon Shumaker,* 524 N.W. 2d 303 (Minn. App. 1994).

The attorney general did not combat the truth of Petitoners' affidavit; therefore the district court should have granted their motion to strike the attorney general as an unauthorized legal counsel rather than denying it. (App, *infra*, A-15).

The court of appeals erred in stating that respondent State Board of Law Examiner members and it's director were acting as state officials in the performance of their official duties. The discussion above shows that they were acting clearly in the absence of jurisdiction as private individuals, and, as such, could not have the attorney general represent them in Petitioners' RICO and 42 USC 1983 causes of action against them.

A. Petitioners should be granted Default Judgment against Respondent State Board Of Law Examiners and it's Director.

Petitioners brought a motion to strike Respondent State Board of Law Examiners and it's director's motion to dismiss; filed a memorandum of law, supporting affidavit and an application for default judgment under F.R.C.P. 55. (Record, Doc. Nos. 16, 17, 18 & 19). Said motion to dismiss was based upon the attorney general not having the authority to represent these respondents as they were being sued in their individual capacities. With Respondent State Board of Law Examiner members and it's director being in an unrepresented state (since attorney general was unauthorized legal counsel), they failed to serve a timely answer or motion to dismiss on Petitioners and were in default. Petitioners' Application for Default Judgment under F.R.C.P. 55 fully complied with all the requirements of Rule 55. (Record, Doc. Nos. 16, 17, 18 & 19). The federal rules of civil procedure allow a default judgment and formal decree *pro confesso* to be entered against them. *Frow V. De La Vega,* 1872, 15 Wall, (82 U.S.) 552, 21 L.Ed. 60.

The district court and court of appeals disregarded the clear procedural standards of F.R.C.P. 55 and should have granted default judgment in favor of Petitioners against

Respondent State Board of Law Examiner members Baer, Gomez, Kyle, Wilderson, Jr., Cade, Kelly, Warrick and it's director Corneille.

V. The District Court and Court of Appeals disregarded the clear requirements of F.R.C.P. 8 &12 (b).

Since the prime responsibility for the proper functioning of the federal judiciary rests with the Supreme Court, it has the authority to exercise it's supervisory powers where a lower federal court has disregarded the clear requirements of the Federal Rules of Civil Procedure. *Hickman v. Taylor,* 329 U.S. 495 (1947).

In this case, the district court, with the affirmation of the court of appeals, disregarded the clear requirements of F.R.C.P. 8 and 12 (b). Regarding Rule 8, the Supreme Court stated that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. *Conley v. Gibson,* 355 U.S. 41 (1957). Petitioners's complaint for both their RICO and 42 USC 1983 causes of action present sufficient allegations to support their claims. (App., *infra,* A-18 & A-33). Furthermore, Pro Se complaints must be liberally construed on a motion to dismiss for failure to state a claim upon which relief can be granted. *Haines v. Kerner,* 404 U.S. 519 (1972). The district court ruled that Petitioners failed to prove that Respondents Mabley and Greenstein, Mabley and Wall, LLC acted under color of state law. (See App., *infra,* at A-14). By doing so, the district court had ruled on the merits of Petitioners' claims, which were not properly before the court. Furthermore, given the fact that Respondents Mabley and Greenstein, Mabley & Wall, LLC were in default (by not answering Petitioners' complaint timely and in it's failure to serve a valid Rule 12 (b) motion), there were no defenses

before the district court for it to rule that Petitioners failed to state a claim in their complaint.

The district court and court of appeals also disregarded the clear requirements of F.R.C.P. 12 (b) by allowing Respondents Mabley and Greenstein, Mabley and Wall, LLC to serve and file an invalid and void amended motion to dismiss. These respondents first served an initial Rule 12 motion which was invalid because it failed to specifically list any affirmative defenses. (App., *infra,* A-43). Then these Respondents served a second amended Rule 12 motion to dismiss. (App., *infra,* A-44), An amendment of a motion will not be permitted because motions are not "pleadings." *McDonald v. Hall,* 579 F.2d 120, (C.A. 1st. 1978). An amendment of a motion to dismiss will not be permitted as it is not a responsive pleading under Rule 15 (a). *McLellan v. Mississippi Power & Light Co.,* 526 F. 2d 872 (5th. Cir. 1976). Therefore, Respondents's Mabley and Greenstein, Mabley and Wall, LLC were in default for failing to either answer Petitioners' complaint timely or to bring a valid timely Rule 12 motion. As a general rule, federal courts will consider a Rule 12 (b) motion by a party in default as untimely and therefore as having been waived. *U.S. ex. rel. Masucci v. Folette,* 272 F. Supp 563 (D.C. N.Y. 1967).

Therefore, Petitioners should have been granted default judgment against Respondents' Mabley and Greenstein, Mabley & Wall, LLC, as they served a proper Rule 55 motion against them. (Record, Doc. 16, 17, 18 & 19).

CONCLUSION

1. The Petition for a Writ of Certiorari should be granted.

In view of the law and argument presented above, the Court may wish to consider summary reversal and order the following relief:

REVERSE the court of appeals; REMAND back to the district court for an award of damages by a jury to Petitioners for both their RICO and 42 USC 1983 causes of action against Respondents Mabley, Corneille, Baer, Gomez, Kyle, Wilderson Jr., Cade, Kelly, and Warrick; GRANT Petitioners the other relief requested in their complaint; RULE that the allegations in Petitioners' complaint are to be taken as true.

2. That petitioners have such additional relief and process as may be necessary and appropriate in the premises.

Dated: December 29, 2005.

Respectfully submitted,

David R. Sina and Candice M. Sina
5755 Heather Ridge Dr.
Shoreview, Minnesota 55126
(651) 484-4303

Petitioners Pro Se

United States Court of Appeals
FOR THE EIGHTH DISTRICT

No. 04-2555

David R. Sina; Candice M. Sina,
Appellants,

v.

Frank T. Mabley, et al,
Appellees.

Appeal from the United States District Court for the District of Minnesota.
(UNPUBLISHED)

Submitted: July 27, 2005
Filed: September 1, 2005

Before: COLLOTON, HANSEN and BENTON, Circuit Judges.

PER CURIAM.

David and Candice Sina appeal following the district court's dismissal of their 42 U.S.C. 1983 complaint. For reversal, they argue that (1) the Minnesota Attorney General lacked authority to represent the defendants who were state employees, and that therefore the Sinas were entitled to a default judgment, (2) the district court erred in granting defendant Frank T. Mabley's amended motion to dismiss because the motion was procedurally defective, and therefore the Sinas were entitled to a default judgment, and (3) the district court should have allowed the Sinas to amend their complaint, and should have granted their motion to strike defendants' motions to dismiss. For the reasons discussed below, we affirm the judgment of the district court.

The Minnesota Attorney General had authority to represent the state defendants: even though they were sued in their individual capacities, the complained of acts were performed as state officials. See Minn. Stat. Ann. Sec. 3.736 (state shall defend state employees from suits pertaining to acts or omissions taken during their period of employment if employee was acting within scope of employment); 8.06 (Attorney General shall act as attorney for state officials and state boards in all matters pertaining to their official duties) (West 2005). Thus, there was no basis for a default judgment. Similarly, there was no basis to enter default judgment against Mabley, as his amended motion to dismiss was not improper or procedurally pejudicial. Accordingly, the district court also did not err in denying the Sinas' motion to strike as frivolous.

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1. The Honorable Richard H. Battey, United States District Judge for the District of South Dakota, sitting by designation in the District of Minnesota.

Finally, although the Sinas argue that they should have been allowed to amend their complaint to remove the law firm and the Board as defendants, they made no motion to amend, and removal of these defendants would not have saved the complaint from dismissal.

Accordingly, we affirm. See 8th. Cir. R. 47B.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civ. 04-172-RHB

David R. Sina and Candice M. Sina,

Plaintiffs,

v.

Frank T. Mabley, et al.

Defendants.

JUDGMENT

Based upon the Court's Memorandum Opinion and Order, judgment shall be entered in favor of defendants and against plaintiffs.

Dated this 13th. day of May, 2004.

BY THE COURT

s/ Richard H. Battey
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civ. 04-172-RHB

David R. Sina and Candice M. Sina,

Plaintiffs,

v.

FRANK T. MABLEY, an individual; GREENSTEIN, MABLEY & WALL, LLC, A private business organization and enterprise; GORDON W. SHUMAKER, an individual; SALVADOR M. ROSAS, an individual; BETRAN PORITSKY, an individual; HYAM SEGELL, an individual; MARGARET FULLER CORNEILLE, an individual; CARL BAER, an individual; ISABEL GOMEZ, an Individual; RICHARD H. KYLE, an individual; FRANK B. WILDERSON Jr., an individual; MARY P. WALBRAN, an individual; JOHN D. KELLY, an individual; CATHERINE M. WARRICK, an individual; and STATE BOARD OF LAW EXAMINERS, a state agency and an Enterprise.

Defendants.

MEMORANDUM OPINION AND ORDER

Procedural History

Plaintiffs David R. Sina ("David") and Candice M. Sina ("Candice") (collectively referred to as "the Sinas") filed their complaint in this matter on Jan. 26, 2004. Plaintiffs allege that the defendants have violated certain provisions of the Racketeer Influenced and Corrupt

Organizations Act ("RICO"), 18 U.S.C. 1961-1968, as well as numerous constitutional rights. On Feb. 17, 2004, defendants Frank T. Mabley and Greenstein, Mabley & Wall, LLC ("Mabley") filed a motion for dismissal; pursuant to Rule 12 of the Federal Rules of Civil Procedure. On Feb. 27, 2004, Mabley filed an amended motion for dismissal. The remaining defendants, which are referred to in the parties' briefs as the "State Defendants," also filed a motion to dismiss on Feb. 17. For purposes of this memorandum opinion and order, the State Defendants will be further categorized. Judges Salvador M. Rosas, Gordon Shumaker, Betran Poritsky and Hyam Segell, will be collectively referred to as "the Judges." Maragret Fuller Corneille, Carl Baer, Isabel Gomez, Ricjard H. Kyle, Frank B. Wilderson, Jr., Mary P. Walbran, Joseph R. Cade, Catherine Warrick, and the State Board of Law Examiners, will be collectively referred to as "the Bar Board Examiners."

FACTS

The events leading up to plaintiffs' present cause of action date back to 1985. David is a law school graduate, however, he has not been admitted to practice law. In September of 1985, David was informed that he did not attain a passing score on the Minnesota State Bar Examination. (Comp. At Ex.N). It is this failure to be admitted which is the "trigger" to this litigation.

Shortly after plaintiffs were informed that David failed the bar examination, David's wife Candice filed a defamation suit against David's ex-wife, Janet A. Heaberlin("Janet") and Janet's attorney, Frank T. Mabley. David also had pending a fraud action against Janet that pertained to the property settlement of their divorce. These matters, venued in the Second Judicial District of the State of Minnesota, were eventually consolidated and heard by the Honorable Hyam Segell. Judge Segell, who is deceased and an unserved defendant in this case, granted summary

judgment to Janet and Mabley and dismissed the Sinas's complaint. (Id. at Ex. B).

Concerning the circumstances surrounding that litigation, Judge Segell wrote a letter to Marcia Proctor, the Executive Director of the Minnesota State Board of Law Examiners ("the Board"). In that letter Judge Segell stated that he felt the complaints the Sinas filed against Janet were "nothing more than vexatious and frivolous litigation seeking vengeance." Judge Segell also requested tha Board consider his letter should David petition to take the bar examination again.

As a consequence of the litigation before Judge Segell, Janet filed a counterclaim and third-party claimj against the Sinas. (Comp. At Ex. B). The judge sitting on that trial was Betrand Poritsky, who is also a defendant in this matter. On Sept. 30, 1986, the jury returned a verdict finding the Sinas liable to Janet and awarding her $8,670.83. Judge Poritsky isued a conclusion of law and order for judgment in accordance with the jury' decision on October 9, 1986.

On Sept. 15, 1987, the Sinas filed a motion to set aside and vacate the Dec. 19, 1985 order, memroandum and judgment that Judge Segell issued dismissing the Sinas complaints against Janet and her attorney Mabley. (Id. at Ex.B). That motion was heard by Judge Gordon Shumaker,a defendant in this matter. Judge Shumaker denied the Sinas motion and awarded attorney Mabley fees in the amount of $600.00 as sanctions. The court held the Sinas and their attorney, Louis J. McCoy, jointly liable for the fees.

Although the record is not clear, various other events transpired from 1987 to the Sinas's filing of the present litigation. In particular, there was correspondence between the Sinas and Margaret Fuller Corneille, the director of the Board and a defendant in this matter. The bulk of this correspondence relates to David's inquiries regarding his applications to take the Minnesota bar examination, his subsequent pleas that he did in fact pass the bar examination,

and his requests for information on which the Board relied when conducting its character investigation hearings on him. The Sinas rely on these events to support their RICO claims against the Board and its members.

On Aug. 14, 1998, judgment was entered against the Sinas, and in favor of Janet, pursuant to the Sinas confession of judgment in the amount of $14,942.24. (Comp. at Ex. M). On Dec. 5, 2003, the Sinas filed a motion to set aside and vacate the above references orders and judgments that had been imposed against them. Attorney Mabley then issued a garnishment summons against the Sinas on Jan. 2, 2004, for money owed to Janet. The unpaid balance was quoted at $4,963.17. Subsequently, the Sinas filed a motion to vacate this garnishment on the basis that it was illegal. Judge Salvador Rosas, who is also a defendant in this matter, denied the Sinas motion. (Id. at Ex. C). Furthermore, Judge Rosas awarded attorney fees to Janet in the amount of $750.

STANDARD OF REVIEW
Subject Matter Jurisdiction

"Lack of subject matter jurisdiction cannot be waived by the parties or ignored by court." Pacific Nat'l Ins. Co. v. Transport Ins. Co., 341 F. 2d 514, 516 (8th. Cir. 1965). "A district court has broader power to decide its own right to hear the case than it has when the merits of the case was reached." Orborne v. United States, 918 F. 2d 724, 729 (8th. Cir. 1990). (internal quotations and citations omitted). "Dismissal for lack of subject matter jurisdiction will not be granted lightly." Wheeler v. St. Louis Southwestern Ry. Co., 90 F. 3d 327, 329 (8th. Cir. 1996)(citations omitted). "Dismissal is proper, however, when a facial attack on a complaint's alleged basis for subject matter jurisdiction shows there is no basis for jurisdiction." Id. (citation omitted).

Motion to Dismiss

In deciding whether a motion to dismiss should be granted, all facts set forth in the complaint are assumed to be true and all reasonable inferences must be construed in favor of the complainant. Morton v. Becker, 793 F. 2d 185, 187 (8th. Cir. 1986).(citations omitted). " A motion to dismiss a complaint should not be granted unless it appears beyond doubt that the plaintiff can prove no set of fcats which would entitle him to relief." Id. (citation omitted). Only the facts set forth in the complaint, and the exhibits attached thereto, are considered in a Rule 12(b)(6) motion. Id.(citation omitted). If the court determines that the "complaint does not state a ground for relief, then dismissal of the case would be on the merits, not for want of jurisdiction." Bell v. Hood, 327 U.S. 678, 682 (1946).

DISCUSSION

The facts the Sinas set forth in support of their RICO cause of action essentially fall within three categories. First, the Sinas have brought suit against Mabley because attorney Frank T. Mabley represented David's ex-wife Janet in the various legal proceedings the Sinas brought against her. These lawsuits all turned out poorly for the Sinas and they lost a significant amount of money through the levying of sanctions against them. The Sinas also believe attorney Mabley conspired to cause them financial harm when he wrote a letter to the Board informing them of his opinion of David's competence to practice law and when he testified at a "sham" character investigation hearing. Thus, plaintiffs claim Mabley's conduct amounts to racketeering activity.

Second, the Sinas have brought suit against the Judges who presided over the various adverse judgments they received. They claim the Judges' actions were taken with the intent "to defraud the Sinas of money and property and to defraud David of business income." (Comp. at par.28). The Sinas also base a portion of their claims on the

fact that Judge Segell sent a letter to the Board that indicated David should not be permitted to sit for the bar examination again. Thus, plaintiffs claim the Judges conduct amounts to racketeering activity.

Third, the Sinas have brought suit against the Bar Board Examiners who dealt with David's applications to take the bar examination and conducted the two character investigations. The Sinas argue that Bar Board Examiners schemed "to cover up and defraud David of business income from the practice of law" by denying his admission to practice law. Plaintiifs contend David actually did pass the bar examination and that the Bar Board Examiners have been concealing documents and acting improperly in an attempt to hide that fact. This, plaintiffs claim the Bar Board Examiners' conduct amounts to racketeering activity. As a result of all of the defendants' violations, the Sinas claim they are entitled to $8.55 million and various other remedies.

Finally, along with the numerous allegations that the defendants are "scheming" against the Sinas, plaintiffs' complaint is littered with accusations that the defendants violated several of the Sinas' constitutional rights. In support of their section 1983 cause of action, the Sinas allege that the defendants have violated their constitutional right to due process; to confront witnesses against them; to security in their persons; to a jury trial; to an impartial tribunal; and to petition the court for redress. As a result, the Sinas claim they are entitled to $2.85 million.

The defendants submit numerous reasons why the Sinas's complaint is flawed and should be dismissed. The defenses relied on by defendants include; statute of limitations, immunity, elements of the RICO statute not being satisfied, failure to state a constitutional violation, and res judicata. Some of these defenses are asserted by, and apply to all the defendants, while others are specific to an individual defendant. Regardless of their application, the reasoning put forth by defendants in support of their motions

to dismiss is valid and the Sinas' complaint shall be dismissed.

Statute of Limitations

RICO formed Title IX of the Organized Crime Control Act of 1970, Pub. L. 91-452, 84 Stat. 922. "The major purpose behind RICO is to curb the infiltration of legitimate business organizations by racketeers." Sinclair v. Hawk, 314 F. 3d 934, 943 (8th. Cir. 2003)(internal quotations and citations omitted). "Civil RICO claims are governed by a four year statute of limitations." Klehr v. A.O. Smith Corp., 87 F.3d 231,238 (8th. Cir. 1999). (citations omitted), aff'd 519 U.S. 1073, (1997). The statute of limitations in a RICO action begins to run "as soon as the plaintiff discovers, or reasonably should have discovered, both the existence and source of his injury and that the injury is part of a pattern." Ass'n of Commonwealth Claimants v. Moylan, 71 F. 3d 1398, 1402 (8th. Cir. 1995)(internal quotations and citations omitted). "The date when the injury and the pattern shouold have been discovered is subject to a standard of reasonableness..." Klehr, 87 F.3d at 238(citation omitted).

The Sinas filed their complaint on Jan. 26, 2004. In that complaint they state that "from at least Dec. 18, 1985 through the present...[the defendants] conducted, participated in, engaged in, conspired to engage in, or aided or abetted, the conduct of the affairs of the enterprises through a pattern of racketeering activity." (Comp, par. 7). The defendants argue that the Sinas claims are based on events that transpired more than four years ago. Plaintiff argue, however, that recent "overt acts" by defendants create the appropriate time from which the statute of limitations should begin to run. These alleged "overt acts" include Judge Rosas Jan. 2004 statements and actions where he denied the Sinas' motion to vacate the garnishment order against them. The Sinas also claim the Bar Board Examiners letter in Dec. 2003 stating David had never filed an

application to take the bar examination qualifies as an "overt act."

The most recent case the Sinas cite to rebut the defendants' claims that the statute of limitations has run on plaintiffs' RICO claims was decided 22 years before RICO's enactment. What the Sinas are attempting to assert in rebuttal of the defendants' statute of limitations defense in known as the "last predicate act" rule. Application of the last predicate act rule effectively resets the four year statute of limitations on a civil RICO claim upon the completion of each predicate act comprising part of the same pattern of racketeering conduct. The novelty of the Sinas' argument is recognized, however, it is not persuasive.

The last predicate act rule was promulgated by the Third Circuit Court of Appeals, however, it was not followed by the Eighth Circuit, and it has been determined by the Supreme Court that this rule is an improper interpretation of the civil RICO statute. See Keystone Ins. Co. v. Houghton, 863 F. 2d 1125, 1130 (3d. Cir. 1988) (applying the last predicate act rule), abrogated by Klehr v. A.O. Smith Corp., 521 U.S. 179, 187 (1997); Moylan, 71 F. 3d at 1402 (stating the statute of limitations begins to run when plaintiff discovers injury is part of a pattern). Thus, in applying the rule as stated in Moylan, the statute of limitations for plaintiffs' civil RICO claims against defendants began to run sometime between Dec. 18, 1985 and April 25, 1988. It was during this time that defendants allegedly began conspiring in an enterprise to defraud David and cause him financial ruin. (Comp., par. 7). The Sinas have clearly established in their complaint that they were aware of the events transpiring around them during this time, but they failed to file their complaint until Jan. 26, 2004. This is well after the four year statute of limitations on their RICO claim passed. As a result, the Sinas's RICO claims are time-barred and dismissed with prejudice for failure to state a claim on which relief may be granted. The Court notes, however, that even though it finds that plaintiffs' RICO claims are barred by the

four year statute of limitations, it does so without expressly addressing whether the defendants' conduct qualifies as a RICO violation.

Absolute Judicial Immunity

"The official seeking absolute immunity bears the burden of showing that such immunity is justified for the function in question." Burns v. Reed, 500 U.S. 478, 486 (1991)(citations omitted). "Judges performing judicial functions enjoy absolute immunity from section 1983 liability." Robinson v. Freeze, 15 F. 3d 107, 108 (8th. Cir. 1994). Notably, " judges are not immune from lawsuits based on actions taken in the complete absence of all jurisdiction," however, "the scope of the judge's jurisdiction must be construed broadly where the issue is the immunity of the judge." Duty v. City of Springdale, Ark., 42 F. 3d 460, 462 (8th. Cir. 1994).

The Sinas' allegations against the Judges contest orders, opinions, judgments and garnishments the judges issued in matters in which the Sinas were involved. Shielding judges from liability for making decisions such as these is the exact reason why the doctrine of absolute immunity was established. Thus, the Sinas' complaint against the Judges are dismissed with prejudice for failure to state a claim on which relief may be granted.

In regards to Judge Segell, plaintiffs claim his letter to the Board addressing David's pending application to take the bar examination does not qualify as a judicial act. It is the position of this Court that Judge Segell's act of writing the letter to the Board does constitute a judicial act which entitles him to immunity. Moreover, Judge Segell was deceased when plaintiffs commenced this action and service was never executed on him. Service was executed on his widow, however, there is no evidence that his widow is the representative of his estate. See Van Slooten v. Estate of Schneider-Janzen, 623 N.W. 2d 269, 271-72 (Minn. Ct. App. 2001) (dismissing case for failure to serve representative of

decedent's estate). Thus, plaintiffs' claims against Judge Segell are also dismissed without prejudice for insufficiency of process.

Absolute Quasi-Judicial Immunity

Finally, the Court will address the Bar Board Examiners' claim that they are entitled to absolute quasi-judicial immunity. "When judicial immunity is extended to officials other than judges, it is because their judgments are functionally comparable to those of judges- that is, because they, too, exercise a discretionary judgment as a part of their function." Antoine v. Byers & Anderson, Inc., 508 U.S. 429, 436 (1993)(internal quotations and citations omitted). The Eighth Circuit has held that members of the bar examination are "entitled to absolute quasi-judicial immunity because they acted on behalf of the court in administering the bar admission process." LaNave v. Minnesota Supreme Court, 915 F. 2d 386, 387 (8th. Cir. 1990)(citations omitted). In this matter the Sinas are suing the Bar Board Examiners for the actions they took surrounding David's pursuit to pass the bar examination. Thus, the Sinas' claims against the Bar Board Examiners are dismissed with prejudice for failure to state a claim upon which relief may be granted.

42 U.S.C. 1983

The Sinas claim Mabley violated their constitutional rights. To vindicate these alleged violations plaintiffs rely on section 1983. Mabley has moved to dismiss these claims pursuant to Rule 12(b)(1) and (6). "To state a claim under section 1983, a plaintiff must allege the violation of a right secured by the Constitution and laws of the United States, and must show that the alleged deprivation was committed by a person acting under color of state law." West v. Atkins, 487 U.S. 42, 48 (1988)(citations omitted). "To constitute state action, the deprivation must be caused by the exercise of some right or privilege created by the State or by a person for whom the State is responsible, and the party charged with

the deprivation must be a person who may fairly said to be a state actor.". Id. at 49, 108 S.Ct. at 2255. This excludes "merely private conduct, no matter how discriminatory or wrongful." Amn. Mfrs. Mut. Ins. Co. v. Sullivan, 526 U.S. 40, 49 (1999)(internal quotations and citations omitted). The Sinas have failed to establish that either attorney Mabley or thefirm of Greenstein, Mabley & Wall, LLC acted under color of state law. Thus, the Sinas' section 1983 claims against Mabley are dismissed with prejudice for failure to state a claim upon which relief may be granted.

CONCLUSION

This action is meritless. Accordingly, it is hereby

ORDERED that Mabley's amended motion for dismissal (Docket #13) is granted.

IT IS FURTHER ORDERED that the State Defendants' motion to dismiss (Docket #6) is granted.

Dated this 13th. day of May, 2004.

BY THE COURT

s/ Richard H. Battey
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civ. 04-172-RHB

David R. Sina and Candice M. Sina,

Plaintiffs,

v.

Frank T. Mabley, et al,

Defendants.

ORDER DENYING PLAINTIFFS' MOTIONS

Plaintiffs David R. and Candice M. Sina ("plaintiffs") filed their complaint in this matter on Jan. 26, 2004. On Feb. 17, 2004, defendants Frank T. Mabley and Greenstein, Mabley & Wall, LLC ("Mabley"), and the remaining defendants filed motions to dismiss pursuant to Rule 12 of the Federal Rules of Civil Procedure. The Court issued an Order on Feb. 24, 2004, addressing how the parties are to proceed in resolving defendants' motions to dismiss. The Scheduling Order requires defendants to submit a memorandum of law in support of their motions to dismiss on or before Mar. 22, 2004. Plaintiffs then have until Apr. 12th. to respond while defendants have until Apr. 26th. to reply. Plaintiffs now have filed a motion to strike defendants' motions to dismiss and an application for default judgment.

Plantiffs' motion to strike is premised on the theory that Mabley" motion to dismiss is insufficient, the amended motion to dismiss is void, and defendants' motion to dismiss is improperly submitted with the intent to perpetrate a fraud upon this Court. Plaintiffs' motion to strike is denied as frivolous as not grounded in fact or law. Additionally, the motion is premature. Plaintiffs also claim they are entitled to default judgment because defendants have failed to answer the complaint. "When a motion to dismiss has been filed, no

answer need be filed until ten days after the court disposes of the motion." Northland Ins. Cos. V. Blaylock, 115 F. Supp. 1108, 1115 (D. Minn. 2000); see also Fed. R. Civ. Pro. 12 (b) (stating that a motion to dismiss shall be made prior to pleading if such pleading is permitted). Plaintiffs' application for default judgment is denied.

Plaintiffs are also instructed not to file further extraneous motions until all the defendants' motions to dismiss are resolved. Plaintiffs' sole obligation at this point is to respond to defendants' memorandum in support of their motions to dismiss which are to be filed in accordance with the Scheduling Order dated Feb. 24th.

On Mar. 5, 2004, Mabley filed a motion for award of fees, costs and imposition of sanctions under Rule 11. Mabley's motion is denied at the present time pending submission of an affidavit by Mabley setting forth an itemized statement of the time spent in responding to plaintiffs' motion to strike and application for default judgment. Mabley's affidavit shall accompany the memorandum of law in support of motion to dismiss which is due on or before Mar. 22, 2004. Plaintiffs shall include in their response to defendants' motions to dismiss a response to the affidavit in support of sanctions. The Court is considering plaintiffs' motions to be frivolous and premature.

Henceforth, future motions raising a question of law shall be served on opposing counsel and filed with the clerk. The motion shall be accompanied by a brief containing the specific points or propositions of law with the authorities in support thereof on which the moving party will rely. On or before 20 days after service of a motion and brief, unless otherwise specifically ordered by the Court, all opposing parties shall serve and submit to the Court briefs containing the specific points or propositions of law with authorities in support thereof in opposition to the motion. The movant may submit to the Court a reply brief within ten days after service of the brief in opposition. No hearings will be held

on any motion, nor will a hearing be scheduled, unless specifically stated otherwise by the Court.
Accordingly, it is hereby

ORDERED that plaintiffs' motion to strike motions to dismiss (Docket #16) is denied.

IT IS FURTHER ORDERED that plaintiffs' application for default judgment (Docket # 19) is denied.

IT IS FURTHER ORDERED that Mabley shall file an affidavit in support of the motion for attorney fees, costs and imposition of sanctions under Rule 11 (Docket # 21).

Dated this 15th. day of March, 2004.

BY THE COURT

s/ Richard H. Battey
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civ. 04-172-RHB

David R. Sina and Candice M. Sina,

Plaintiffs,

v.

FRANK T. MABLEY, an individual; GREENSTEIN, MABLEY & WALL, LLC, A private business organization and enterprise; GORDON W. SHUMAKER, an individual; SAKVADOR M. ROSAS, an individual, BETRAND PORITSKY, an individual; HYAM SEGELL, an individual; MARGARET FULLER CORNEILLE, an individual; CARL BAER, an individual; ISABEL GOMEZ, an Individual; RICHARD H. KYLE, an individual; FRANK B. WILDERSON, Jr., an individual; MARY P. WALBRAN, an individual; JOHN D. KELLY, an individual; CATHERINE M. WARRICK, an individual; and STATE BOARD OF LAW EXAMINERS, a state agency and an enterprise.

Defendants.

COMPLAINT

FIRST CAUSE OF ACTION

PETITION, COMPLAINT, AND CLAIM IN THE NATURE OF A SUIT FOR CIVIL REMEDY AND DAMAGES TO PROPERTY AND BUSINESS INTERESTS UNDER 18 U.S.C. 1964(a) and (c) FOR

RACKETEERING INFLUENCED CORRUPT ORGANIZATION ACTIVITY

1. Plaintiffs David R. Sina and Candice M. Sina are individuals and a married couple residing at 9404 Parkside Cir. N., Champlin, Minnesota 55316 (The "Sinas").

2. Defendant Greenstein, Mabley and Wall, LLC ("Greenstein") is a limited liability corporation formed under the laws of the State of Minnesota, having its principal place of business at 2803 Lincoln Dr., Suite 300, Roseville, Minnesota 55113. Greenstein is a law firm engaged in the practice of law. Defendant Frank T. Mabley is an attorney associated with Greenstein.

3. State Board of Law Examiners ("Bar Board") is an administrative agency under the State of Minnesota, having its principal place of business at 380 Jackson St., Suite 201, St. Paul, Minnesota 55101. The Bar Board is an agency that rules and regulates Minnesota and outstate applicants for taking the bar exam. The Bar Board is conducting "proceedings" not cognizable within the Rules of the Supreme Court and State Board of Law Examiners and the Minnesota Rules and Minnesota Rules of Civil Procedure resulting in countless void determinations and orders.

4. All other named defendants are individuals residing in the State of Minnesota and other states.

5. At all relevant times, the following constituted an "enterprise" within the meaning of 18 USC 1961(4)and 1962(c): Greenstein, Mabley & Wall, LLC (Greenstein); and State Board of Law Examiners (Bar Board).

6. Mabley, Shumaker, Rosas, Poritsky, Segell, Corneille, Baer, Gomez, Kyle, Wilderson Jr., Walbran, Cade Kelly and Warrick are a "person" within the meaning of 18 USC 1961 (3) and 1964 (c), who assisted with and/or participated in the conduct of said enterprises' affairs.

7. From at least Dec. 18, 1985 through the present, and still continuing, Mabley, Corneille, and the other named individual defendants personally or through their agent of

agents, conducted, participated in, engaged in, conspired to engage in, or aided or abetted, the conduct of the affairs of the enterprises through a pattern of racketeering activity within the meaning of 18 USC 1961 (1), 1961 (5), 1962 (a) and 1962 (c). Mabley and Corneilles and the other named individual defendants' pattern of racketeering consisted, but was not limited to:

a. a scheme to defraud that was knowingly and intentionally devised by Mabley, Corneille and the other named individual defendants to obtain the Sinas money and to deny business income to David for the practice of law by means of false or fraudulent pretenses, extortion, representations, and frauds upon the courts, and for the purpose of executing such scheme, Mabley, Corneille and the other named individual defendants placed or caused to be placed in a post office, or authorized depository for mail, matter that furthered the scheme for defraud; Mabley, Corneille and the other named individual defendants committed mail fraud, in violation of 18 USC 1341; and for the purpose of executing such scheme, Mabley, Corneille and the other named individual defendants transmitted or caused to be transmitted by means of wire, radio or television communication in interstate or foreign commerce that furthered the scheme to defraud, Mabley, Corneille, and the other named individual defendants committed wire fraud, in violation of 18 USC 1343. These acts all occurred after the effective date of RICO and more than two such acts occurred within ten years of one another.

b. a scheme to defraud that was knowingly and intentionally devised by Mabley to obtain the Sinas money, which were under the care of the Sinas employers or financial institutions, and for the purpose of executing such scheme, Mabley and/or the other named individual defendants placed or caused to be placed in a post office, or authorized depository for mail, matter that furthered the scheme to defraud; Mabley and/or the other named individual defendants committed mail fraud, in violation of

18 USC 1341; and for the purpose of executing such scheme, Mabley and/or the other named individual defendants transmitted or cause to be transmitted by means of wirw, radio or television communication in interstate commerce that furthered the scheme to defraud, Mabley, and/or the other named individual defendants committed wire fraud, in violation of 18 USC 1343. These acts all occurred after the effective date of RICO and more two such acts occurred within 10 years of one another.

8. At all relevant times, the enterprises alleged in paragraph 6 were engaged in, and it's activities affect interstate commerce.

9. The racketeering activities of Mabley, Corneille and the other named individual defendants and the enterprises continue to cause business injury to David's business income from the practice of law. The acts which were committed or aided or abetted to by Mabley, Corneille, the other above named individual defendants and the enterprise of Greenstein and the Bar Board, and which are still continuing, were the proximate cause and direct result of the Sinas being injured in their business and property interests and to David's business income from the practice of law.

10. The frauds and extortion committed by Mabley, Corneille, and the other named individual defendants and the enterprise of Greenstein and the Bar Board were reasonably foreseeable and were anticipated to result in financial injury to the Sinas as a natural consequence. Mabley, Corneille, and the other named individual defendants and the enterprises of Greenstein and the Bar Board pose a threat of continued criminal activity. The members of the enterprises whose role was to aid and abet in predicate acts of fraud and extortion was knowing and intentional and reckless. The racketeering activity of Mabley, Corneille and the other named individual defendants was merely a footnote in a long history of activity which enable persons like Mabley, Corneille and the other named individual defendants to

obtain interest in and maintain control of the enterprises of Greenstein and the Bar Board. Even those aiding and abetting Mabley, Corneille and the other named individual defendants were not willfully blind to criminal acts in exhibiting a conscious, reckless disregard for the Sinas business and property interests and to David's business income from the practice of law.

Pattern of racketeering – Predicate Acts

11. On Jan. 2, 2004, Mabley, acting as an attorney for Greenstein, served a garnishment summons on TCF where the Sinas have their checking account. (Exh. A). TCF held $2,522.21 of the Sinas money on this garnishment. This was a fraudulent taking of the Sinas money by Mabley. Mabley did it with full knowledge that it was fraud because Mabley knew that he issued this garnishment summons on a void judgment. This void judgment goes back to Dec. 18, 1985. All of the facts and law documenting that this is a void judgment is contained in the Sinas Dec. 5, 2003 "Plaintiff and Third-Party Defendant's Memorandum to Set Aside and Vacate Orders and Judgments." (Exh. B).

12. On Jan. 14, 2004, the Sinas brought a motion to have Mabley's Jan. 2, 2004 garnishment summons vacate on the grounds that it did not comply with the statutory requirements. Rosas denied this motion. (Exh. C). This was a predicate act of fraud by Rosas aiding and abetting with Mabley and Greenstein, in Mabley's fraudulent scheme to take this $2,522.21 from the Sinas in violation of the law.

13. Mabley is engaged in a continual scheme of fraud and extortion by his serving of his counterclaim dated Jan. 12, 2004 on the Sinas, where he and the enterprise Greenstein are once again entering into a predicate act of fraud with the intent to have Rosas aid and abet in this fraudulent scheme with Mabley to grant Mabley another $6,000 plus in general damages and possible statutory sanctions, where this counterclaim is also based on the prior void judgments. Both Rosas and Mabley are knowledgeable

in the law and both know that this counterclaim of Mabley is a predicate act of fraud but they both are, or will be, engaging in this racketeering activity in total disregard for the law.

14. Rosas is further aiding and abetting with the scheme of Mabley and Greenstein by allowing them to continue to defraud and take additional money and property of the Sinas by his utter disregard for the law and Supreme Court precedent and denying Sina's motion to vacate the prior void judgments, as supported by the Sinas memorandum in Exhibit B above. Rosas is continuing to aid and abet Mabley and Greenstein in a continuing and ongoing pattern of racketeering activity. See Exhibit D for Rosas order. Rosas also committed mail fraud in the issueance of this order. Rosas told the Sinas at the motion to vacate hearing in front of him on Jan. 13, 2004, that he did not want to read any of these 3 files before him. The isuance of this order by Rosas was aiding and abetting Mabley and Greenstein to further their scheme to defraud David of business income from his occupation of practicing law.

15. Rosas aided and abetted with Mabley and Greenstein to continue with the scheme of defrauding and extorting money from the Sinas by issuing an order on Jan. 15, 2004, in total disregard for the law (which law was available to Rosas in Sina Exhibit B), by awarding damages in the amount of $750 against the Sinas. Rosas committed mail fraud in the issuance of this order.

16. Mabley and Greenstein are continuing with an ongoing scheme to defraud monies from the Sinas on prior void judgments by serving the Sinas on Dec. 10, 2003 with interrogatories and intent to claim statutory damages. The Sinas served an objection on Mabley and Greenstein wo withdraw it's claim for damages but they refuse to do so, in total disregard for the law.

17. On Dec. 23, 2003, Corneille continues with the ongoing scheme to cover up and defraud David of business income from the practice of law with a pattern of

concealment of documents from David's bar examination file, by notifying David that 1) the Bar Board cannot provide a list of exhibits that was introduced into evidence at the Apr. 9, 1987 hearing and 2) the Bar Board will not provide a copy of the transcript for the Apr. 9, 1987 hearing (Exh. E). After years of requesting the Bar Board to furnish David with a copy of David's application and evidence of his filing fee being paid, (which is required before the Bar Board can have subject matter jurisdiction to conduct a character investigation hearing under Rule 104), Corneille finally admits on Dec. 23, 2003 that: "Our files contain no bar application other than that which you filed for the July 1985 bar Exam." (See Exh. E).

18. On Aug. 18, 2003, David wrote to the Bar Board and, once again, requested a copy of his application, evidence that a filing fee had been paid and the statutory authority (jurisdiction) for the Bar Board to conduct it's character investigation hearings on David, which were held on Apr. 9, 1987 and Apr. 25, 1988; and the statutory authority (jurisdiction) that the Bar Board had to issue it's determination (order) on Apr. 4, 1989. (Exh.F). Corneille and the Bar Board continue with the concealment and the scheme to defraud David of business income from practicing law by refusing, once again, to provide the information requested by David. (Exh. G). Additionally, Corneille attempts to continue with the cover up by stating that Rule 13B does not allow certain information to be released, when, she knew, that this was a rule from Jan. 1, 2003, which could not be made retroactive to the rules in effect in 1987. There was no such rule in 1987.

19. On Aug. 28, 2000, Corneille and the Bar Board continue with a scheme to conceal and defraud David by writing a letter to Representative William Haas fraudulently stating Bar Board rules that do not apply to David, trying to make current rules retroactive to a987 and covering up that the Bar Board did not have jurisdiction to conduct the character investigation hearings on Apr. 9, 1987 and Apr. 25,

1988, and issue it's order on Apr. 4, 1989. (Exh. H). This letter of Corneille to Haas was in response to David's July 9, 2000 letter to Haas where David stated, once again, that he did not have an application on file nor paid a filing fee to the Bar Board. (Exh. I).

20. Corneille and the Bar Board continue with a scheme to conceal and defraud David by Corneill" May 19, 1992 letter to David by, once again, refusing to deal with the issue that David had filed no application nor paid any filing fee to take any bar exam. Corneille uses the mails to cover up this scheme. David had written a letter to Corneille and the Bar Board on Apr. 24, 1992 (Exh. J) and May 1, 1992 again stating that he had no application on file nor paid any filing fee. (Exh. K).

21. Between Apr. 17, 2000 and Oct. 3, 2003, Mabley and Greenstein continued with it's ongoing scheme to defraud the Sinas of property by extorting $13,049.29 from them by taking said monies on 22 separate occasions, where Mabley, being knowledgeable in the law, knew full well that these monies were being taken fraudulently on prior void judgments. (Exh. L). Mabley committed mail fraud by receiving these monies through the mails.

22. On Aug. 14, 1998, Mabley and Greenstein continued with a scheme of defrauding and extorting money from the Sinas on prior void judgments by coercing the Sinas under duress to sign a confession of judgment for $14,942.24. (Exh. M). Mabley committed mail fraud in the delivery of this document.

23. On Jan. 1, 1996 and Mar. 1, 1996, Mabley and Greenstein continued with a scheme to defraud and extort monies from the Sinas by taking $18,000 of David's monies from marital dissolution assets and using them to pay off amounts on prior void judgments. Mabley committed mail fraud in the transfer of this $18,000.

24. Corneille and the Bar Board, in an effort to cover up, conceal and defraud David from business income from practicing law wrote a letter to John Gilmore, David's

attorney, fraudulently telling Mr. Gilmore that David had not passed the bar exam in July, 1985. In June, 1987, the Bar Board made a policy change in the way that bar exams were graded, and the Bar Board made this change retroactive to anyone who took the bar exam in July 1985. David took the bar exam in July, 1985, so this new grading policy applied to him. The passing grade for the bar exam is 260 combined points, Under the old policy, anyone who had an average combined score of just over 260 points was regraded and, if the new regraded combined score was below 260 points, that person failed. Under the new grading policy, if anyone received a score of 260 on any one grading event (and not on the combined score), that person passed the bar exam.

25. Corneille and the Bar Board, continued in a fraud and a scheme to conceal from David that he had in fact passed the July, 1985 bar exam by intentionally not telling David that he had passed the bar exam. Corneille and the Bar Board intentionally 1) concealed this new grading policy from David by not notifying him of it; 2) fraudulently concealed that David's test scores had been regraded; and 3) fraudulently concealed that David had passed the bar exam under the new grading policy. David accidentally found out about this new retroactive grading policy of the Bar Board from a July 11, 1987 newspaper article that appeared in the Star Tribune. Immediately after David read this article, he called and spoke with a Bar Board staff member who told him that his bar examination file containing all information and bar exam materials had been lost and couldn't be found anywhere and that no review of his July 1985 bar exam would be possible. (See Exh. L). Then, on July 14, 1987, David had a telephone conversation with Corneille, where she told David that 1) all July, 1985 test scores that had two digits after the decimal point had been regraded and; 2) anyone that had combined test scores of 260 to 264 points had their test scores regraded. Corneille fraudulently concealed that David passed the bar exam under the new retroactive grading policy. On September 26, 1985, the Bar

Board sent David a copy of his test scores from the July, 1985 bar exam, which showed that David's test scores had been regraded because there were 2 digits after the decimal point. (Exh. N). These regraded test scores proved that David's initial combined test scores were between 260 and 264 points, as Corneille had told him previously. Therefore, according to the new grading policy that came out in June, 1987, and which was retroactive to David's July 1985 bar exam, David had in fact passed the bar exam. Because David's initial combined test scores were over 260 points, his exam should not have been subject to the regraded test scores, since regraded results were only applicable under the old policy; not the new retroactive grading policy. Corneille and the Bar Board intentionally wanted David to be held to the old grading standards (where David received a 205 combined score on the regrade after receiving an initial score of 260 to 264 points), which would have failed David on the July 1985 bar exam. Corneille and the Bar Board fraudulently and discriminately applied the old grading standards to David's test scores, in violation of the Bar Board's new grading rule of June, 1987, which was to be applied retroactively to all July 1985 test scores as well.

26. Corneille, the Bar Board, and the individual members of the Bar Board (Baer, Gomez, Kyle, Wilderson Jr., Walbran, Cade, Kelly and Warrick), by fraudulently concealing that David had in fact passed the July 1985 bar exam under the June 1987 retroactive grading policy, instigated and developed a vile and heinous plot to make sure that David never would be told that he had passed the bar exam. This vile and heinous plot started on Mar. 6, 1987 when Corneille and the Bar Board instigated a sham character investigation hearing by notifying David that such a hearing had been set for Apr. 9, 1987. (See Exh. O for Corneille's sham hearing notice letter). At this sham character investigation hearing, the Bar Board and Bar Board members introduced into evidence the unsubstantiated Dec. 18, 1985 letter of Segell which told the Bar Board that David

should never be allowed to practice law and denied David his due process rights by purposely not having Segell at this hearing so that David could not cross examine him. The Bar Board and bar board members also attacked the good name, reputation of David to practice law and further attacked the good name, character and reputation of David's wife Candice.

27. Corneille, the Bar Board and the Bar Board members continued with their scheme to defraud David of property and business income from practicing law by having another sham character investigation hearing on Apr. 25, 1988 and then conspired together to issue a sham and illegal Findings of Fact, Conclusions of Law and Determination (Order) on Apr. 4, 1989 ordering that David "should not be allowed to take the Bar Examination and/or be admitted to the Bar of the State of Minnesota." These 2 sham proceedings and subsequent Bar Board determination (order) were done by Corneille and each bar board member with full knowledge that David had already passed the bar exam under the Bar Board's June 1987 retroactive grading policy and that because of it, David was an attorney and had an absolute right to be admitted to practice law in the State of Minnesota. This was a conspiracy to prevent David from ever practicing law.

28. Corneille, the Bar Board, Mabley, Segell and the individual bar board members that signed the Apr. 4, 1989 determination (order), had all aided and abetted with each other to plot, develop and participate in 2 sham character investigation hearings, all done under color of law, to defraud David and cause him to be damaged financially and incur substantial business income loss from the practice of law. Segell aided and abetted the Bar Board and the other conspirators in this grandiose scheme by initially writing a letter on Dec. 18, 1985 to the Bar Board telling them that David " should under no circumstances ever be admitted to practice in this state" (See Exh. B) and then purposely not showing up at the hearing on Apr. 9, 1987 so that David had

no opportunity to cross examine Segell about the statements that he made in his letter. All the above conspirators acquiesced in this scheme to deny David due process of law. Mabley aided and abetted the Bar Board and the other conspirators in this grandiose scheme by initially writing a letter on Aug. 8, 1986 to the Bar Board attacking David's good name, reputation and competence to practice law (See Exh. B) and then testifying at the April 25, 1988 sham character investigation hearing attacking, not only the good name and reputation and competence of David, but attacking and discrediting the good name and reputation of David's wife Candice as well.

29. Between February 24, 1986 and Nov. 7, 1994, Mabley and Greenstein continued with a scheme to defraud and extort money and property from the Sinas by issuing and serving on the Sinas 4 garnishments, 14 separate sets of interrogatories and 1 motion to compel answers to interrogatories, with all of these documents being used to defraud monies from the Sinas on prior void judgments. Mabley committed mail fraud in the delivery of these documents.

30. On October 16, 1987, Shumaker aided and abetted with Mabley and Greenstein to continue to scheme to defraud the Sinas of money and property by awarding $600 in damages against the Sinas in favor of Mabley and to aid and abet Mabley and Greenstein in their scheme to defraud David of business income from his occupation of practicing law by failing to vacate prior void judgments in utter disregard for the law. (See Exh. B, pg. 36). Shumaker committed mail fraud in the delivery of this document.

31. On Dec. 22, 1986, Poritsky aided and abetted with Mabley and Greenstein to continue its scheme to defraud the Sinas of money, property and to defraud David of business income from his occupation of practicing law by issuing separate judgments against the Sinas for a total of $17,043.97 on the prior void judgments as documented in

Sinas Exhibit B. Poritsky committed mail fraud in the delivery of these documents.

32. On Dec. 19, 1985, Segell aided and abetted with Mabley and Greenstein to continue to scheme to defraud the Sinas of money and property and to defraud David of business income from his occupation of practicing law by issuing 2 orders that would allow Mabley and Greenstein to pursue money damages against the Sinas on the false pretense that the Sinas have been engaged in frivolous and vexatious litigation. The 2 orders that Segell issued were void as a matter of law, and Segell issued them in total disregard for the law; and issued them in violation of the code of judicial conduct. See Sina exhibit B for detailed explanation of facts and law.

33. On Dec. 18, 1985, Segell aided and abetted with Mabley and Greenstein to continue its scheme to defraud the Sinas of money and property and to defraud David of business income from his occupation of practicing law by writing a letter to the State Board of Law Examiners telling them that David "should under no circumstances ever be admitted to practice in this state." (See Exh. B, pg. 28). Segell aided and abetted with Mabley and Greenstein to have a sham court proceeding on Dec. 18, 1985 done under color of law with the intent to defraud the Sinas from money and property and to defraud David of business income from his occupation of practicing law. This sham proceeding that Segell conducted was done in total violation of the law; the sham proceeding was done under color of law with the court having no jurisdiction; the sham proceeding was done in violation of United Constitution Amendments Four, Five, Seven and Fourteen. This sham proceeding was set up by and between Segell, Mabley and Greenstein, when all of these parties knew full well that this court was emgaged in a legal proceeding that lacked subject matter jurisdiction and which was instigated by Segell, Mabley and Greenstein to deny the Sinas of constitutionally protected rights and to

defraud the Sinas of money, property and to defraud David of business income from his occupation of practicing law.

34. All of the predicate acts described were related so as to establish a pattern of racketeering activity, within the meaning of 18 USC 1962 (c), in that their common purpose was to defraud the Sinas of money, business interest and business income; Mabley, Segell, Shumaker, Rosas, Poritsky, Corneille, Baer, Gomez, Kyle, Wilderson Jr., Walbran, Cade, Kelly and Warrick personally or through their agent or agents, directly or indirectly, participated in all of the acts and employed the same or similar methods of commission; the Sinas were the victims of the fraudulent acts; and /or the acts were otherwise related by distinguishing characteristics and were not isolated events.

35. All of the predicate acts described above were continuous so as to form a pattern of racketeering activity in that:

a. Mabley, Segell, Shumaker, Rosas, Poritsky, Corneille, Baer, Gomez, Kyle, Wilderson Jr., Walbran, Cade, Kelly and Warrick engaged in the predicate acts described above over a period of time (from at least Dec. 18, 1985); and b. Mabley, Segell, Shumaker, Rosas, Poritsky, Corneille, Baer, Gomez, Kyle, Wilderson Jr., Walbran, Cade, Kelly and Warrick continue or threaten to continue in the predicate activity described above as a regular way of conducting Greenstein's and the Bar Board's on-going business activities.

36. There was no justifiable reason for Segell, Mabley and agreenstein to plan and execute such a vile and heinous sham court proceeding on Dec. 18, 1985 to cause money, property and business income loss to the Sinas. There was no justifiable reason for Corneille, the Bar Board, Segell, Mabley, Greenstein and the bar board members (Baer, Gomez, Wilderson Jr., Walbran, Cade, Kelly and Warrick) to plan and execute such vile and heinous sham character investigation hearings and issue a subsequent sham order to cause money, property and business income loss to

the Sinas. Such vile and heinous conduct must have no part in the jurisprudence system of our state and nation. Such continued pattern of racketeering activities done with such evil and malicious intent by Mabley, Corneille, Greenstein, the Bar Board and the other defendants aiding and abetting in their scheme should be dealt with severely by this Court. The Sinas are petitioning this Court to not only award them treble damages under 18 USC 1964 (c), but are petitioning for additional sanctions to prevent such a pattern of racketeering activities from continuing in the future against them and other innocent American citizens by Mabley, Corneille, Greenstein, Shumaker, Rosas, Poritsky, Segell, Baer, Gomez, Kyle, Wilderson, Jr., Walbran, Cade, Kelly, Warrick and the Bar Board.

REMEDY SOUGHT

WHEREFORE, Plaintiffs David and Candice Sina demand judgement from the Court as follows:

1. As no reasonable theory of apportionment arises, the defendants should be held jointly and severally liable.

2. To enter judgment against Mabley, Corneille, Segell, Shumaker, Rosas, Poritsky, Baer, Gomez, Kyle, Wilderson Jr., Walbran, Cade, Kelly and Warrick for a sum of money equal to the amount of damages and/or losses that Plaintiffs have sustained or will sustain, said amount being greater than $ 2,850,000.

3. To treble the amount of said damages pursuant to 18 USC 1964 (c), with said amount being greater than $ 8,550,000.

4. To order Frank T. Mabley to divest himself of any and all interest in Greenstein, Mabley and Wall, LLC, under 18 USC 1964 (a).

5. To order the dissolution of Greenstein, Mabley and Wall, LLC, under 18 USC 1964 (a).

6. To order that Frank T. Mabley is prohibited from practicing law in any firm engaged in the practice of law, under 18 USC 1964 (a).

7. To order Margaret Fuller Corneille, Baer, Gomez, Kyle, Wilderson, Jr., Walbran, Cade, Kelly and Warrick from engaging in the same type of endeavor that the State Board of Law Examiners is engaged in, under 18 USC 1964 (a).

8. To order Margaret Fuller Corneille, Baer, Gomez, Kyle, Wilderson Jr., Walbran, Cade, Kelly and Warrick to terminate all employment and other relationships with the State Board of Law Examiners, under 18 USC 1964 (a).

JURY TRIAL DEMANDED.

SECOND CAUSE OF ACTION

PETITION AND COMPLAINT IN THE NATURE OF A SUIT FOR DEPRIVATION OF FEDERALLY PROTECTED RIGHTS 42 USC 1983

1. Plaintiffs reallege paragraphs 1 through 4 of first cause of action.

2. Defendants conspired under color of state law to deprive the Sinas of federally protected rights clearly articulated at United States Constitutional Amendments Four, Five, and Seven specifically applying to due process rights, private prior agreement and conspiracy of defendants under authority of United Constitution Amendment Fourteen and the common law authorities of *U.S. v. Price,* 383 U.S. 787 (1966) and *U.S. v. Guest,* 383 U.S. 745 (1966).

3. Defendants deprived the Sinas of their Constitutional Right not to be deprived of life, liberty or property without due process of law; not to be deprived of their Constitutional Right to confront witnesses against them without due process of law; not to be deprived of their Constitutional Right to be secure in their persons; not to be deprived of their Constitutional Right to a jury trial; not be be deprived of an impartial tribunal; and their Constitutional Right to petition court for redress.

4. Defendants have acted under color of law in a variety of "official" proceedings such as court hearings, court trials and administrative hearings that have been an ongoing process of void proceedings that have the same common nexus and have been going on from the present back as far as Dec. 18, 1985. Private individuals, including judges, attorneys, administrative agency board members are within reach of 42 USC 1983 when acting under color of law.

5. Defendants Mabley, Greenstein and Rosas denied the Sinas of their due process right to an impartial tribunal and one who has legal jurisdiction of a matter by the void hearing that was held in front of Rosas on Jan. 13, 2004. Rosas, acting under of law, denied the Sinas motion to vacate the 3 void judgments on the grounds that they were void for lack of subject matter jurisdiction. (See Exh. B for facts and supporting law). Rosas, lost subject matter jurisdiction to hear these 3 motions because he was biased and prejudiced against the Sinas and refused, in utter disregard for the law, to read the Sinas memorandum of law which supported their case. Rosas told the Sinas at the beginning of the hearing on Jan. 13, 2004, that he does not want to read any of these 3 files.

6. Defendants Mabley, Greenstein and Rosas conspired under color of law to deny the Sinas of their due process rights where Rosas issued his order on Jan. 15, 2004 denying the 3 motions that the Sinas brought to vacate prior void judgments. (See Exh. D). This order issued by Rosas was a void order because he lost subject matter jurisdiction. His statement that the Sinas motion was a "frivolous motion" and was brought "without legal basis" shows a bias and spleen against the Sinas as well as proving that Rosas did not look at the Sinas memorandum(Exh.B) or else he would not have made such prejudicial statements. It is evident that Mabley and Rosas conspired to deny the Sinas of due process rights because 1) Mabley's memorandum filed in opposition to the Sinas motion contained zero law and zero

evidence to support why the Sinas motion should be denied and, 2) Mabley did not dispute that these prior judgments were void and, 3) Mabley made allegations that the Sinas' motions were frivolous, based solely upon the passage of time. Both Mabley and Rosas, being learned in the law, knew full well Minnesota law is quite clear that the passage of time does not make void judgments valid and that a motion to vacate a void judgment can be made at any time. This law was clearly articulated in Sinas memorandum(Exh. B) filed with Mabley and Rosas. The law stated in the Sinas memorandum also clearly articulates that a judge that issues orders or conducts court proceedings without subject matter jurisdiction, which become actions and proceedings done under color of law, lose all judicial immunity and can be sued personally. Rosas composing his void order of Jan. 15, 2004 was a predicate act of fraud. It demonstrated the practice of "pigeonholing", which was the evil act of blocking the Sinas, as pro se litigants, from going forward on their claim.

7. Mabley, Greenstein and Rosas conspired under color of law to deny the Sinas of their due process rights to an impartial tribunal when Rosas allowed Mabley and Greenstein to defraud the Sinas of $2,522.21 by denying the Sinas motion to set aside Mabley's illegal garnishment summons (Exh. A). The statute that Mabley violated was clearly articulated on the order that Rosas denied. (Exh. C). Rosas further conspired with Mabley and Greenstein to cause injury and damage to the Sinas by illegally awarding $750 in damages against the Sinas in favor of Mabley.

8. On Oct. 16, 1987 Mabley, Greenstein and Shumaker conspired under color of law to deny the Sinas of their due process rights with another sham and void order issued by Shumaker on Oct. 16, 1987 that denied the Sinas motion to vacate these same prior void judgments. (See Exh. B). Mabley and Shumaker, being learned in the law, knew that the prior void judgments that were the subject matter of this proceeding, were void as a matter of law, so Shumaker's

order was an illegal and sham order in an attempt to make these prior void judgments valid. Minnesota law does not support this. (See Exh. B). Shumaker further conspired with Mabley to cause injury and damages to the Sinas by ordering $600 in damages against the Sinas, in utter disregard for the law regarding void judgments and the right that the Sinas had to bring a motion to vacate a void judgment. Shumaker's statement in his order that "his conclusion(Segell's) as to vexatious litigation was not without some basis..." shows that Shumaker was now acting under color of law to use a court proceeding to cover up a fellow colleague judge's (Segell) void orders. This was a denial of the Sinas due process rights. Shumaker conspired with Mabley and Greenstein by issuing his void orders because Shumaker acted in total disregard for the law as Mabley's memorandum contained zero law and zero evidence to show why the Sinas' motion to vacate prior void judgments should be denied.

9. Mabley, Greenstein and Poritsky entered into a conspiracy to deny the Sinas of their constitutionally protected rights by conducting a sham jury trial proceeding in October, 1986. Poritsky then issued 3 separate judgments against the Sinas on Dec. 22, 1986 in the amount of $17,043.97. This sham jury trial was conducted based upon the prior void judgments of Segell. Both Mabley and Poritsky, being learned in the law, knew that Poritsky did not have subject matter jurisdiction to conduct a jury trial, where such trial was based upon prior void judgments. (Exh. B). Poritsky, acted under color of law, in an attempt to cover up a fellow colleague judge's (Segell) void orders. Poritsky, acting under color of law, instructed the jury that the issue of frivolous litigation had already been decided by Segell. (See Exh. B, pg. 4). Mabley and Poritsky knew, being learned in the law, that a subsequent judgment (the $17,043.97 judgments here) could not be made valid where they were based upon Segell's prior void orders and judgment. (See Exh. B). Mabley, Greenstein and Poritsky, in total disregard

for the law, conspired anyway to conduct a sham jury trial where the Sinas suffered damages in the amount of $17,043.97 from this void jury verdict.

10. On Aug. 8, 1986, Mabley, acting under color of law as a state officer, wrote a letter to the Bar Board advising them of David's incompetence to practice law and of his ethics. (See Exh. B, pg. 52). Mabley's intent was to attack the good name and reputation of David and being able to do so under the color of law as a bar licensed attorney.

11. On or before Dec. 18, 1985, Mabley, Greenstein and Segell conspired under color of law to deny the Sinas of their constitutionally protected rights by planing, setting up and conducting a sham court hearing to grant Mabley's summary judgment motions and dismiss the Sinas' actions. Segell conducted a hearing on Dec. 18, 1985 under color of law where he knew that he was biased and prejudiced against the Sinas and that such bias disqualified him from having subject matter jurisdiction to conduct this hearing and to issue any orders or judgments based upon this hearing. (See Exh. B). Mabley, Greenstein and Segell conspired under color of law to deny the Sinas of due process rights of having a trial on the merits and having the opportunity to present and cross examine witnesses because Segell did not ask any questions about the underlying defamation causes of action that were the subject matter of this hearing. (See Exh. B).

12. On Dec. 18, 1985, Segell wrote a letter to the Bar Board where he stated that David "should under no circumstances ever be admitted to practice law in this state." (See Exh. B, pg. 28). He further stated in this letter that "All of these cases(meaning the Sinas 3 cases) are nothing more than vexatious and frivolous litigation seeking vengeance against the former Mrs. Sina and her lawyer." (See Exh. B; brackets added). This letter proved that Segall was biased and prejudiced against the Sinas; that he had already decided that the counterclaims of Mableys (where he alleged frivolous litigation by the Sinas) was true, and that because of such bias and bias and denying the Sinas of their due

process rights, he had no jurisdiction to conduct the hearing on Dec. 18, 1985 nor to issue any orders based upon that hearing. However, on Dec. 19, 1985, Segell moved ahead without any jurisdiction and isued 2 orders that dismissed the Sinas actions and granted Mabley summary judgment on his countermotion. These 2 orders were void as a matter of law. (See Exh. B).

13. All of the subsequent orders, jury verdicts and judgments that were issued based upon Segell's void orders of Dec. 19, 1985 (which are the subject matter of all of the above paragraphs) are void as a matter of law, since any subsequent judgment based upon a prior void judgment w-is void. (See Exh. B for supporting law).

14. That as a direct result of the void orders of Segell on Dec. 19, 1985, all of the orders, jury verdicts and judgments described in the above paragraphs, were issued against the Sinas and caused the Sinas to suffer financial damages, emotional pain and anguish.

15. Mabley, Greenstein and Segell conspired under color of law to prevent David from practicing law in the state of Minnesota and to cause David loss of business income from practicing law. It was their plot and scheme to use a sham summary judgment proceeding done under color of law to accomplish this result. After Segell wrote his letter to the Bar Board on Dec. 18, 1985, he conspired with the Bar Board to keep this letter hidden from David. Both Segell and the Bar Board kept this letter hidden from David until Mar., 1987, when David's attorney for an upcoming Bar Board hearing discovered it in the Bar Board files.

16. Mabley, Greenstein, Segell and all defendants listed in the caption of this cause of action, have conspired from the present time all the way back to Dec. 18, 1985 to deny David his constitutional right to practice law as an occupation that he is qualified and trained for. The Bar Board rules require that any applicant for the bar exam must complete an application and pay a filing fee before any character investigation hearing can be held. (Rules 100A and

104; Rules of the Supreme Court and State Board of Law Examiners for Admission to the Bar, As amended Oct. 1, 1986, Dec. 23, 1986 and Jan. 20, 1987). David has never filed for any bar exam since Dec. 18, 1985 nor has he paid any filing fee to apply for such exam. The Bar Board rules (Rule 104) specifically require that an application must be on file and the proper fee paid before the Bar Board has jurisdiction to conduct a character investigation hearing on any applicant. The Dec. 23, 2004 letter of Bar Board director Margaret Fuller Corneille stated that "Our files contain no bar application other than that which you filed for the July 1985 bar exam." (Exh. E).

17. Notwithstanding paragraph 15 above, David has already passed the bar exam, retroactive to July, 1985, according to the Bar Board's new bar exam grading policy of June, 1987. (See par. 24 and 25 of prior claim contained herein). Therefore, the 2 character investigation hearings were done under color of law and the Bar Board's Apr. 4, 1989 determination (order) was void as a matter of law.

18. On Apr. 9, 1987 and Apr. 25, 1988, the Bar Board conducted 2 sham character investigation hearings, done under color of law, on David. Corneille participated in these hearings as the Bar Board Director. Defendants Baer, Gomez, Kyle, Wilderson Jr., Walbran, Cade, Kelly and Warrick participated as Bar Board members. Defendants Mabley and Segell participated as witnesses. These 2 sham proceedings were conducted under color of law, without subject matter jurisdiction, as David had filed no application nor paid any filing fee to empower the Bar Board with jurisdiction to conduct such character investigation hearings. The Bar Board introduced the Dec. 18, 1985 letter of Segell and the Aug. 8, 1986 letter of Mabley into evidence at the Apr. 9, 1987 hearing, but denied David of his constitutional right to confront and cross examine witnesses and be entitled to a free and fair trial because neither Mabley nor Segell were present at this hearing.

19. Based upon the 2 sham character investigation hearings of Apr. 9, 1987 and Apr. 25, 1988, both done under color of law, the Bar Board issued Findings of Fact, Conclusions of Law and Determination (Order) on Apr. 4, 1989 where they ordered that "...David...should not be allowed to be admitted to the Bar of the State of Minnesota." Defendants Baer, Gomez, Kyle, Wilderson Jr., Walbran, Cade, Kelly and Warrick signed this order on behalf of the Bar Board. The law in Minnesota is that administrative board members that act without subject matter jurisdiction are subject to personal liability for their actions.(See Exh. B).

20. Both David and Candice were denied due process rights to a fair and impartial tribunal under the constitution of the United States of America. Candice was coerced by the Bar Board to take the witness stand and testify against her husband in violation of both David and Candice's due process rights.

21. As a direct result of the 2 sham character investigation hearings and subsequent order issued by the Bar Board, all done under color of state law, the Sinas have been damaged financially and have suffered emotional pain and anguish, and still continue to suffer such damages.

22. Mabley, Segell, Corneille and the defendant Bar Board members, many of whom are licensed attorneys learned in the law, have engaged in a conspiracy to cover up these sham proceedings and subsequent order, all done under color of law, when they all knew that the Bar Board had no jurisdiction to conduct such hearings and make such an order because David had no application on file nor paid any filing fee. The Bar Board was further aware that David had already passed the bar exam, based upon the Bar Board's June, 1987 retroactive grading policy.

23. David wrote to defendant Corneille and the Bar Board on Apr. 4, 1992; Apr. 24, 1992, and May 1, 1992, requesting them to vacate it's 2 hearings and Apr. 4, 1989 order but they refused to do so. This refusal shows a spleen and vile and heinous conduct that they have no intention to

make things right, but decided to violate the constitutional rights of David and Candice and cause them to suffer financial damages and emotional pain and anguish for their illegal conduct.

24. Defendant Corneille and all the Bar Board member defendants also denied the Sinas due process rights by covering up the fact that the attorney that the Sinas had representing them was either on probation or recommended for suspension from the practice of law the entire time that he represented the Sinas This lawyer of the Sinas was subsequently disbarred from the practice of law 8 months after the Bar Board issued it's void order on Apr. 4, 1989. Defendant Corneille and Bar Board members knew, or should have known, as a state agency responsible for attorney misconduct, that McCoy had been recommended for indefinite suspension from the practice of law on Aug. 17, 1987, which was well before the second sham character investigation hearing of Apr. 25, 1988 and void order of Apr. 25, 1988. It should be reasonable to conclude that Mabley, Segell, Defendant Corneille and all Bar Board members had acted in concert under the color of law to deny the Sinas of due process rights and unequivocally deny David his constitutional right to practice law as the occupation that he was educated, trained and qualified for, by fraudulently concealing that David had already passed the bar exam and was a lawyer.

25. That as a direct result of the actions of all of the defendants, David and Candice Sina have suffered, and continue to suffer financial damages, emotional anguish, emotional distress, embarrassment and humiliation, loss of reputation, loss of a career and other damages.

REMEDY SOUGHT

WHEREFORE, Plaintiffs David and Candice Sina demand judgment from the Court as follows:

1. As no reasonable theory of apportionment arises, the defendants should be held jointly and severally liable.

2. Compensatory money damages in an amount greater than $2,850,000.

3. Attorney fees and other costs.

4. Further relief as the Court deems just and proper.

JURY TRIAL DEMANDED.

s/ David R. Sina
Attorney Pro Se
9404 Parkside Cir. N.
Champlin, MN 55316
(763) 323-6667

s/ Candice M. Sina
Attorney Pro Se
9404 Parkside Cir. N.
Champlin, MN 55316
(763) 323-6667

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

David R. Sina and Candice M. Sina,

Plaintiffs,

v.

Frank T. Mabley, et al,

Defendants.

NOTICE OF MOTION AND MOTION
FOR DISMISSAL UNDER RULE 12

To: Plaintiffs Candice M. Sina and David R. Sina, 9404 Parkside Cir. N., Champlin, Minnesota 55316:

Please take notice that on a date to be determined by the court, when counsel may be heard, Defendants Frank T. Mabley and the law firm of Greenstein, Mabley & Wall, LLC, will appear before one of the Honorable Justices of this Honorable Court whose identity has yet to be determined, in a manner determined by the Court and move this Court for dismissal of all of the Plaintiffs' claims under Rule 12 of the Federal Rules of Civil Procedure.

The Motion is based upon the pleadings, records, affidavits and memoranda of law to be filed with the Court in support of these Defendants' motion.

Dated: February 13, 2004.

s/ Frank T. Mabley, Atty. ID 6578X
Pro Se Defendant and Counsel for
Greenstein, Mabley & Wall, LLC
2803 Lincoln Drive, Suite 300
Roseville, MN 55113-1312
651-636-7696 Telephone
651-636-9600 Facsimile

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civ. File No. 04-172 (ADM/AJB)

David R. Sina and Candice M. Sina,

Plaintiffs,

v.

Frank T. Mabley, et al,

Defendants.

AMENDED NOTICE OF MOTION AND MOTION FOR DISMISSAL UNDER Rule 12 (b)(1) & (6)

To: Plaintifs Candice M. Sina and David R. Sina, 9404 Parkside Cir. N., Champlin, Minnesota 55316:

Please take notice that on a date to be determined by the court, when counsel may be heard, Defendants Frank T. Mabley and the law firm of Greenstein, Mabley & Wall, LLC, will appear before one of the Honorable Justices of this Honorable Court whose identity has yet to be determined, in a manner determined by the Court and move this Court for dismissal of all of the Plaintiffs' claims under Rule 12 (b), (1) and (6) of the Federal Rules of Civil Procedure.

The Motion is based upon the pleadings, records, affidavits and memoranda of law to be filed with the Court in support of these Defendants' motion.

Dated: February 26, 2004.

s/ Frank T. Mabley Atty. ID 6578X
Pro Se Defendant and Counsel for
Greenstein, Mabley & Wall, LLC
2803 Lincoln Drive, Suite 300
Roseville, MN 55113-1312
651-636-7696 Telephone
651-636-9600 Facsimile

SUPREME COURT OF MINNESOTA
BOARD OF LAW EXAMINERS
Galtier Plaza, Suite 201
380 Jackson Street
St. Paul, Minesota 55101

December 23, 2003

Mr. David R. Sina
9404 Parkside Cir. N.
Champlin, MN 55316

Dear Mr. Sina:

After receiving your letter of December 18, 2003, I have asked my staff to again review your application in an effort to locate the items that you requested.

Our files contain no bar application other than that which you filed for the July 1985 bar exam.

We are not able to locate a list of exhibits presented to the Board at the April 1987 hearing. You may be able to obtain a copy of the exhibits from the court reporter. Our records indicate that the court reporter was Nancy A. Smith of Weldon & Associates Court Reporters. The current address and phone number for Weldon & Associates is 1930 Cardinal Drive, Shakopee, Minnesota 55379, Telephone #952-445-0009.

There is only one copy of the transcript for the 1987 hearing in our file, but you should be able to obtain a transcript from Weldon & Associates.

I am sorry we cannot be of more assistance. If you have any questions, please feel free to contact me.

Very truly yours,

MINNESOTA BOARD OF LAW EXAMINERS
s/ Margaret Fuller Corneille, Director

42 USC 1983: (Pertinent parts cited)

"Every person, who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceedings for redress..."

18 USC 1964 (a): (Pertinent parts cited)

" The district courts of the United States shall have the jurisdiction to prevent and restrain violations of section 1962 of this chapter by issuing appropriate orders, including, but not limited to: ordering any person to divest himself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any person, including, but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect interstate or foreign commerce; or ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons."

18 USC 1964 (c): (Pertinent parts cited)

" Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee..."

(2)

No. 05-847

In The
Supreme Court of the United States

DAVID R. SINA AND
CANDICE M. SINA,

Petitioners,

v.

FRANK T. MABLEY, an individual,
"et al",

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE EIGHTH DISTRICT

PETITION FOR REHEARING

David R. Sina and Candice M. Sina
5755 Heather Ridge Dr.
Shoreview, MN 55126
(651) 484-4303

Petitioners Pro Se

Petitioners herein respectfully move this Court for an order 1) vacating its denial of the petition for writ of certiorari, entered on March 20, 2006, and, 2) granting the petition. As grounds for this motion, petitioners state the following:

1. THE GRANT OF REHEARING IN SCHRIBER-SCHROTH CO. v. CLEVELAND TRUST CO.

The Court granted a rehearing in a patent case in which subsequent events showed that litigation was so concentrated in a single circuit that there was no possibility of securing the conflict of decisions usually necessary to review such decisions. *Schriber-Schroth Co. v. Cleveland Trust Co.*, 305 U.S. 47, 50 (1938).

Even though Schriber was a patent case and the ground for rehearing has now disappeared, the same rationale can be applied in this case to grant a rehearing.

There is an intervening circumstance that would justify a petition for rehearing in this case under Rule 44. That intervening circumstance is that this RICO cause of action stems from the denial of the rights of petitioner David to practice law in the State of Minnesota. The circumstances involving the denial of that right are so unique that 1) there has never been a case like this in any circuit court (nor in front of the Supreme Court of the United States); and, 2) it is very unlikely that there will ever be another case like this in any circuit court or in front of the Supreme Court of the United States.

The uniqueness of this case, and where it is very unlikely that there will ever be any case like it so that the circuits will never reach any conflict of decisions, is that the underlying RICO cause of action of petitioners stems from actions taken by the Minnesota State Board of Law Examiners against David and Candice Sina as private United States citizens that had done nothing to invoke the jurisdiction of the State Board of Law Examiners. Neither

David nor Candice Sina were "applicants" to take the bar exam, yet the State Board of Law Examiners acted as if they were, and took actions for which they had no jurisdiction to do so over these 2 private United States citizens.

All of the previous cases that have been before this Court regarding bar examination matters and issues, arose solely from individuals that already were "applicants" to take the bar exam. There is no recorded case precedent where this Court has ever dealt with bar examination issues regarding private United States citizens who were not "applicants" to take the bar exam.

In Minnesota, as is the case in all other 49 states, the Supreme Court of each individual state has the exclusive authority and jurisdiction to make and issue rules regarding the bar examination board that is to govern all matters regarding the bar examination process in that state. That bar examination board in every state, without exception, only has the authority and jurisdiction to govern the bar examination process on those individuals who have applied to take the bar exam and who have become "applicants" to take the bar exam.

It is undisputed that the State Board of Law Examiners was only authorized to conduct character investigation hearings (and issue orders based on these hearings) on "applicants" for the bar exam. *(Rule1-Rules of the Supreme Court and State Board of Law Examiners for Admission to the Bar as amended Oct. 1, 1986, Dec. 23, 1986 and Jan. 20, 1987).* These rules require that only "applicants" can take the bar exam. The Bar Board rules specifically state that the only way that an individual (even a repeat nominee as David was) can become an "applicant" to take the bar exam is to 1) file a proper application; and, 2) pay the required filing fee. *Rules 1 & 104E.* Neither petitioner David nor Candice filed any application nor paid any filing fee to take the bar exam. Yet, the State Board of Law Examiners conducted 2 character investigation hearings on David and issued a determination (order) which stated

that David could not be allowed to take the bar examination again or to practice law in the State of Minnesota. From the denial of the Minnesota Supreme Court to vacate these 2 character investigation hearings and determination, petitioners brought this RICO action against the State Board of Law Examiner members, its director and another attorney for acting under color of law and without subject matter jurisdiction.

The State Board of Law Examiners finally acknowledged by the Dec. 23, 2003 letter of State Board of Law Examiners director Margaret Fuller Corneille that the Bar Board did not have jurisdiction to conduct the 2 character investigation hearings and issue its order on petitioner David because David was not an "applicant" to take the bar exam.. Director Corneille stated in her letter that:

> "Our files contain no bar application other than that which you filed for the July 1985 bar exam."

Neither has the State Board of Law Examiners, the Minnesota Supreme Court, nor Justice Paul H. Anderson denied that the Minnesota State Board of Law Examiner's April 9, 1987 and April 25, 1988 character investigation hearings on petitioner were conducted without subject matter jurisdiction. Neither have any of the above parties denied that the Minnesota State Board of Law Examiners Findings of Fact, Conclusions of Law and Determination (Order) dated April 4, 1989 was issued without subject matter jurisdiction.

The fact that both the character investigation hearings and the Bar Board determination (order) were held and issued without subject matter jurisdiction is supported and proven by the Dec. 15, 2005 letters of Mr. Walter Hansen and Mr. Steven Gunn, Assistant Attorney Generals. Mr. Walter Hansen represents the Minnesota Supreme Court and Minnesota Supreme Court Justice Paul H. Anderson. On

Dec. 15, 2005, he wrote a letter to William Suter, Clerk of Court of the Supreme Court of the United States, stating that:

> "The Minnesota Supreme Court and Justice Paul H. Anderson will not file a response to the petition for writ of mandamus..." (A-1).

Mr. Steven Gunn represents the Minnesota State Board of Law Examiners. On Dec. 15, 2005, he wrote a letter to William Suter, Clerk of the Supreme Court of the United States, stating that:

> "The Minnesota State Board of Law Examiners will not file a response to the petition for a writ of mandamus..." (A-2).

The 2 letters submitted by Mr. Hansen and Mr. Gunn of the Attorney Generals office, both written on Dec. 15, 2005, stating that the Minnesota Supreme Court, Justice Paul H. Anderson, and the State Board of Law Examiners will not file a response to petitioners writ for mandamus, proves that they acknowledge that the State Board of Law Examiners did not have jurisdiction to conduct these 2 hearings and issue its order on petitioner in the first place.

For the reasons stated above that it is unlikely that this type of RICO case involving defendants acting under color of law over bar admission matters involving "non-applicants" will ever be heard by any circuit court again, petitioners respectfully request that the Court grant it's petition for rehearing.

2.THERE IS NO JURISDICTION IN THE CLEAR ABSENSE OF JURISDICTION AS HELD IN BRADLEY V. FISCHER.

Where there is clearly no jurisdiction over the subject matter, any authority exercised is a usurped authority.

Bradley v. Fischer, 80 U.S. (13 Wall) 335 (1872). The courts have always made a distinction between acts done in excess of authority over clear absence of all jurisdiction. This distinction goes all the way back to the Court of the King's Bench, as cited in *Brabley,* Id. Where a plaintiff had not been legally brought before the court, subsequent proceedings were set aside on that ground. *Ackerley v. Parkinson,* 3 Maule & Selwyn, 411.

In this matter, petitioner David was clearly brought before the State Board of Law Examiners that had no jurisdiction over him. It was a usurped authority because petitioner was not an "applicant" as he had not submitted an application nor paid a filing fee, both of which were required before the State Board of Law Examiners had any jurisdiction over him.

Where it is undeniable that the State Board of Law Examiners acted in a clear absence of all jurisdiction, and since our courts have held from at least 1872 that there can be no jurisdiction if there is a clear absence of all jurisdiction, the denial of petition for writ of certiorari should be reconsidered for rehearing.

3. EQUITABLE CONSIDERATIONS UNDER D.C. COURT OF APPEALS V. FELDMAN.

In *Feldman,* respondent challenged a specific bar board rule. The Supreme Court held that review of state court decisions denying admission and challenging an existing rule can only be made by the Supreme Court of the United States. *D.C. Court of Appeals v. Feldman,* 460 U.S. 462 (1983). Likewise, in this case, petitioners are seeking damages under RICO because the Minnesota Supreme Court denied enforcing an existing rule promulgated by the Minnesota Supreme Court for the State Board of Law Examiners, where such actions constituted actions done

under color of law. The rule challenged is the requirement that a person be an "applicant" before the Board of Law Examiners has any jurisdiction over him. A person becomes an "applicant" only upon the filing of an application and paying the proper fee. Petitioner did neither. The Minnesota Supreme Court acted unreasonably and discriminatorily and in violation of it's own rules.

Even though the Court in *Feldman* did not explicitly rule on equitable arguments, the Court nonetheless did discuss them. Petitioners also ask this Court to consider their equitable arguments as a basis for reconsidering their petition for rehearing.

This matter first started on March 9, 1987, (19 years ago), when the State Board of Law Examiners sent petitioner David a letter requiring that he attend a character investigation hearing, even though they had no authority or jurisdiction to do so. Since that time, petitioner David has been precluded from practicing law, for which he is educated and qualified for. He has been able to only obtain seasonal highway construction jobs to provide for his family. These construction jobs consisted of driving dump trucks and operating heavy equipment. Petitioner is now 61 years old. Since he was laid off in November, 2005, petitioner has encountered medical problems that make it unlikely for him to return to highway construction as an equipment operator. This would cut him off from his means of livelihood. Petitioner David has 5 grown children and 7 grandchildren. Petitioner David has no other viable means of support that will allow him to earn the money he needs to support his family. Petitioners are asking this Court to reconsider it's decision to deny their petition for a writ of certiorari as the defendants acted under color of law in denying David the right to practice law causing petitioners humiliation, loss of reputation, embarrassment, and financial damages and hardship.

CONCLUSION

For the reasons set forth above, as well as those contained in the petition for writ of certiorari, petitioners pray that this Court vacate the order of denial and grant the rehearing of the writ of certiorari.

April 12, 2006.

Respectfully submitted,
David R. Sina
Candice M. Sina
5755 Heather Ridge Dr.
Shoreview, Minnesota 55126
(651) 484-4303

Petitioners Pro Se

CERTIFICATE OF PETITIONERS

Petitioners certify that this petition for rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Rule 44.2.

David R. Sina Candice M. Sina

STATE OF MINNESOTA
OFFICE OF THE ATTORNEY GENERAL
Suite 1100
445 Minnesota Street
St. Paul, MN 55101-2128

December 15, 2005

William K. Suter
Clerk of Court
Supreme Court of the United States
One First Street N.E.
Washington, D.C. 20543-0001

Re: In Re David Sina, Petitioner
No. 05-732

Dear Mr. Suter:

I am a member of the Bar of the Supreme Court of the United States and write on behalf of Respondents Minnesota Supreme Court and Minnesota Supreme Court Justice Paul H. Anderson in regard to the above-referenced matter. The Minnesota Supreme Court and Justice Paul H. Anderson will not file a response to the petition for writ of mandamus unless a response is requested by the Supreme Court of the United States.

Enclosed is an affidavit of service of this letter on Petitioner pro se.

Very truly yours,
s/ Walter Karl Hansen
Assistant Attorney General

cc: Justice Paul H. Anderson
Commissioner Richard S. Slowes

STATE OF MINNESOTA
OFFICE OF THE ATTORNEY GENERAL
Suite 1400
445 Minnesota Street
St. Paul, MN 55101-2131

December 15, 2005

William K. Suter
Clerk of Court
Supreme Court of the United States
One First Stree N.E.
Washington, D.C. 20543-0001

Re: In re David Sina, Petitioner
No. 05-732

Dear Mr. Suter:

I am a member of the Bar of the Supreme Court of the United States and write on behalf of Respondent Minnesota State Board of Law Examiners in regard to the above referenced matter. The Minnesota State Board of Law Examiners will not file a response to the petition for a writ of mandamus unless a response is requested by the Supreme Court of the United States.

Enclosed is an affidavit of service of this letter on Petitioner pro se.

Very truly yours,
s/ Steven M. Gunn
Assistant Attorney General
Manager, Health Licensing Division

cc: Minnesota Board of Law Examiners